complaint

Mr and Mrs T, who are represented by a claims management company (CMC), complain that they were mis-sold an investment bond by West Bromwich Building Society.

background

Following a meeting in December 2006, Mr and Mrs T were recommended to invest £150,000 into an investment bond within a balanced distribution fund. The investment provided an income (£24,137.57 in total) and was surrendered in May 2012 for £141,939.64.

In 2006 Mr T had semi-retired and had received lump sum from the sale of his business. They were in their early 60s, had no dependants and owned their house mortgage free. They held over £360,000 in a range of deposit accounts and Mr T had some £80,000 in a managed fund and a with profits bond. They were seeking advice on how to invest £150,000. The suitability letter records their objectives as: "*You are looking to invest £150,000 over the long term (5 years plus). You want to invest this money to produce some additional monthly income. You have stated that you would prefer to draw a lower amount of income if it meant retaining the potential for some capital growth as well".*

The CMC complained to the business on their client's behalf in 2015. It said Mr and Mrs T were inexperienced investors, that they had expected a certain level of income from the investment which had not been achieved, and felt uncomfortable with the amount of capital that was invested. The CMC also set out a number of other concerns which have been addressed and so I won't list them here.

The business rejected the complaint and the CMC replied to say that it felt that the possibility of replacing losses in retirement didn't appear to have been considered. However, it accepted that the fund recommended did match Mr and Mrs T's attitude to risk and objectives but felt that £150,000 into a single fund was too great. The business disagreed.

The matter was referred to this service and one of our adjudicators investigated the complaint. He considered that the investment was suitable for Mr and Mrs T's objectives, but he felt the sum invested into one fund was too high, and should have been diversified. The business disagreed and reiterated that it felt the recommendation was suitable for Mr and Mrs T's circumstances. As a result the matter has been referred to me for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr and Mrs T appear to have been financially secure following his semi-retirement. They had sizable investments, though I note that the vast majority of their money was held on deposit. While I don't consider them to have been naïve investors there is nothing to indicate that they were experienced. Outside the deposit accounts Mr T had couple of slightly less straightforward investments.

Although they held significant sums on deposit these were to be used to allow them to maintain a reasonable standard of living in retirement. They had received £150,000 which they wanted to invest to create a regular monthly income and, if possible, achieve some capital growth. It has been agreed that their appetite for risk was correctly evaluated and they were open to taking a little risk with their money so that they could achieve greater returns. The product recommended was within their risk tolerance levels.

The question that remains is whether it provided sufficient diversification. There is usually a risk when an investor puts all their money into one investment. If it fails there is nothing to offset that failure. I appreciate that Mr and Mrs T had other investments, but this was a large sum of money they had recently acquired and it was something upon which they relied for a comfortable retirement. As such, I consider it would have been appropriate for the risk to have been spread, with part of the money being in a fund that exposed them to less risk. For this reason I find myself in agreement with the adjudicator. I would add that this is a finely balanced decision and I do appreciate the arguments put forward by the business.

The CMC has suggested that each investment should have had a limit of £50,000, but I consider that compensation should be calculated on the basis of half the money going to the original investment, but the remaining £75,000 should be compared with the fair compensation detailed below.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs T as close to the position they would probably now be in if they had not been given unsuitable advice.

I take the view that Mr and Mrs T would have invested differently. It is not possible to say *precisely* what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs T's circumstances and objectives when they invested.

what should the business do?

To compensate Mr and Mrs T fairly it should:

Compare the performance of £75,000 of Mr and Mrs T’s investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

It should also pay interest as set out below and provide the details of the calculation to Mr and Mrs T in a clear, simple format. Income tax may be payable on any interest awarded.

actual value

This means the actual amount paid from the investment at the end date.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, you should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investments should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if you total all those payments and deduct that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs T wanted income with some growth with a small risk to their capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

- The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr and Mrs T's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs T into that position. It does not mean that Mr and Mrs T would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return. Mr and Mrs T could have obtained from investments suited to their objective and risk attitude.

- The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

My final decision is that I uphold this complaint and direct West Bromwich Building Society to pay Mr and Mrs T compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr T to accept or reject my decision before 30 December 2015.

Ivor Graham
ombudsman